

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 * * *

4 SAGE HUMPHRIES, GINA MENICHINO,
5 ROSEMARIE DeANGELO, DANIELLE
6 GUTIERREZ, JANE DOE 100, JULIET
7 DOHERTY, and JANE DOE 200

Case No. 2:21-cv-01412-ART-EJY

8

9 ORDER

Plaintiffs,

v.

10 MITCHELL TAYLOR BUTTON and DUSTY
11 BUTTON,

Defendants.

12 Before the Court is Plaintiff Sage Humphries' Motion for Sanctions Regarding Unlawfully
13 Obtained Information (the "Sanctions Motion"). ECF No. 77.¹ The Court reviewed the Sanctions
14 Motion, Defendants' Opposition (ECF No. 85), and Plaintiff's Reply (ECF No. 89). The Court has
15 also considered Plaintiff's Motion to Supplement the Sanctions Motion. ECF No. 91.

16 **I. RELEVANT BACKGROUND**

17 The instant litigation commenced in July 2021 when Plaintiffs Sage Humphries and Gina
18 Menichino filed suit against Defendant Mitchell Taylor Button alleging violations of federal and
19 state law. ECF No. 1 at 12-18. Since its inception, the case has been active with numerous motions
20 filed and various parties entering and exiting the litigation, including the addition of Dusty Button
21 as a Defendant. ECF No. 18. For purposes of addressing the Sanctions Motion, the Court does not
22 recite an extended history of the litigation or the current case status.

23 A. Humphries' Sanctions Motion.

24 The Sanctions Motion revolves around two abuse prevention orders issued on August 15,
25 2017 by the Boston Municipal Court Department of the Trial Court. ECF Nos. 77-3, 77-4. The
26 Boston Court Orders required Defendants to:

27 ¹ The Sanctions Motion contains several attachments one of which is Exhibit G (FUS). ECF No. 77-8. Filed
28 simultaneously with the Sanctions Motion was a Motion to Seal a Document in Support of Motion for Sanctions. ECF
No. 78. The Motion to Seal seeks to seal Exhibit G. ECF No. 79. The Court granted the Motion to Seal at ECF No. 84.

1 “[S]urrender any and all personal information to the Boston Police Department
 2 pertaining to [Plaintiff Sage Humphries], including electronically stored
 3 information, and is not to publish such information.”

4 *Id.* at 2. In addition, the Boston Court reinforced its warning to Defendants of the consequences of
 5 any violation of its order:

6 The defendants are to surrender any and all personal information to the Boston
 7 Police Department -- fine if you gave it to Attorney Melcher -- pertaining to the
 8 plaintiff, including electrically stored information, and that any such information is
 9 not to be published in any way at all. I hope your clients heard me loud and clear...
 10 If there is any -- if there is any violation of any part of the order, including that part
 11 of the order, your clients will not like the results. I don't want to sound antagonistic
 12 or threatening when I put it in that -- in those terms; I do want your clients to
 13 understand the seriousness with which the Court takes the entire order, including
 14 the provisions that I've set out...

15 ECF No. 77-2 at 65-66.

16 Humphries alleges that in the course of this litigation, Defendants repeatedly violated the
 17 Boston Court Orders by using and disseminating a digital copy of Humphries' iPhone and its data.

18 ECF No. 77 at 9. First, Humphries contends Defendants included text messages in court filings that
 19 could only have come from a copy of Humphries' iPhone that Defendants impermissibly possess.²

20 *Id.* Second, Humphries asserts Defendants sent text messages to a third party in which they
 21 acknowledged the source of the messages was a copy of Humphries' iPhone. *Id.* at 9-10. Third,
 22 Humphries generally contend that a large portion of the documents turned over by Defendants in
 23 discovery come from her iPhone. *Id.* at 10. Finally, Humphries accuses Defendants of improperly
 24 disseminating retained electronic information to the press over the course of the litigation. *Id.*

25 Humphries argues that throughout the litigation she has “put Defendants on clear notice” that
 26 their actions were in violation of the Boston Court Orders. *Id.* She stated this contention (1) in her
 27 Motion to Dismiss Defendants’ Counterclaims (ECF No. 61); (2) in her counsel’s August 12, 2022
 28 letter to Defendants’ counsel explaining the violations of the Boston Court Orders and requesting
 29 Defendants cease disseminating information obtained from their impermissible possession of a copy
 30 of her iPhone (ECF No. 77-9); and (3) on August 31, 2022 at a meet and confer as well as during

² Humphries asserts the text messages—communication between Humphries and multiple third parties—is irrelevant to the instant litigation and meant solely as a distraction from pending legal issues. ECF No. 77 at 9.

1 the week that followed in which the parties communicated regarding Defendants' refusal to change
 2 strategy relating to their possession of the iPhone (ECF No. 77-11). *Id.* at 10-11.

3 Humphries cites controlling case law in support of her argument that the Court possesses
 4 inherent authority to issue sanctions for litigation misconduct specifically when a party has, in bad
 5 faith, violated a court order. *Id.* at 11 *citing Chambers v. NASCO, Inc.*, 501 U.S. 32, 46 (1991); *Fink*
 6 *v. Gomez*, 239 F.3d 989, 991 (9th Cir. 2001); *B.K.B. v. Maui Police Dep't*, 276 F.3d 1091, 1108 (9th
 7 Cir. 2002). Humphries contends Defendants have displayed a "brazen" flouting of the Boston Court
 8 Orders and that their bad faith conduct necessitates the imposition of sanctions. *Id.* at 12. Humphries
 9 argues even if the Court were to find that Defendants' conduct was not initially in bad faith, their
 10 actions have become willful as Humphries has repeatedly alerted Defendants that their actions are
 11 in violation of the Boston Court Orders to no avail. *Id.* at 12-13. She further argues Defendants'
 12 conduct has spiraled into harassment as the pictures leaked to the press have nothing to do with this
 13 litigation and are intended to cause her shame and mental torment. *Id.* at 13.

14 As a result of Defendants' misconduct, Humphries requests a Court order requiring
 15 Defendants to delete the copy of Humphries' iPhone and any of her personal data currently in their
 16 possession, and to cease publication of such information in this litigation. *Id.* at 14. In addition,
 17 Humphries requests an award of attorneys' fees and costs relating to the Sanctions Motion. *Id.*

18 B. Defendants' Opposition.

19 Defendants oppose the Sanctions Motion arguing they are preserving evidence discovered in
 20 their possession after this litigation commenced (something they are required to do), and that
 21 evidence was produced in response to Humphries' discovery requests. ECF No. 85 at 2. Defendants
 22 argue the Sanctions Motion is brought as a ploy to prevent Defendants from presenting exculpatory
 23 evidence supporting their theory of the case, and the true motive behind the Sanctions Motion is the
 24 evolving narrative in the press. *Id.* Specifically, Defendants argue the nature of the evidence
 25 contained on the backup copy of Humphries' iPhone demonstrates Humphries was in a romantic and
 26 consensual relationship with Defendants and not the coercive, illegal relationship asserted in
 27 Humphries' pleadings. *Id.* at 3-4.

1 Defendants argue Humphries uploaded the backup copy of her iPhone onto an external hard
 2 drive belonging to Defendants long before this litigation commenced. *Id.* at 3. Defendants contend
 3 they did not realize they were in possession of the backup copy until they began searching for and
 4 preserving evidence related to this case. *Id.* Defendants assert that after the state court in Boston
 5 issued its Orders, they turned over everything they knew they had at that time to Humphries' counsel.
 6 *Id.* at 4. During discovery in this case, Defendants responded to a broad request for documents that
 7 included some of the documents Humphries now contends are covered by the Boston Court Orders.
 8 *Id.* Defendants accuse Humphries of trying to have it both ways: demanding broad swaths of
 9 discovery while seeking to deprive Defendants of the ability to adequately defend themselves. *Id.*
 10 at 5.

11 Defendants dispute Humphries' interpretation of the Boston Court Orders arguing nothing in
 12 the text of the Orders prevents them from retaining a copy of the evidence they currently possess.
 13 *Id.* Defendants take issue with Humphries' request that this Court order the destruction of the
 14 material currently in their possession when the state court in Boston did not order destruction, but
 15 "surrender" of the materials. *Id.* at 6. Defendants argue if they had destroyed the evidence at issue,
 16 they would be subject to sanctions for spoliation of relevant evidence. *Id.* at 9. In addition,
 17 Defendants argue that the evidence they possessed is relevant to claims made in this litigation by
 18 third parties and that they are legally prohibited from destroying such evidence. *Id.*

19 Defendants point to hypocrisy on Humphries' part. *Id.* at 10. Defendants ask the open
 20 question of why Humphries has not produced this exculpatory information to Defendants as she
 21 should have the original iPhone and its related information in her possession. *Id.* Relying on the
 22 doctrine of unclean hands, Defendants allege that Humphries' hands are "utterly filthy" as they aver
 23 she has not turned over any of the information that she now asks Defendants to destroy. *Id.* at 10-
 24 11.

25 Defendants further dispute that they are in any way responsible for the Daily Mail's use of
 26 photographs. *Id.* at 12. Defendants repeat the assertions that they were under a legal obligation to
 27 produce the documents in discovery, and the fact that the Daily Mail obtained and published
 28 information contained in a public court filing is not Defendants' fault. *Id.* at 12-13.

Finally, Defendants argue this Court is not the proper forum to consider the kind of motion that Humphries brings. *Id.* at 7. Defendants contend that the state court in Boston is the only court with jurisdiction to interpret and enforce its orders and, by extension, to hear this Motion. *Id.* Defendants invoke the *Younger* abstention doctrine arguing the facts of this case satisfy the four criteria of the *Younger* test.³ Defendants state: “(1) the Boston Municipal Court proceedings are ongoing as the last orders by that court is continuing in nature, (2) the application of the Abuse Prevention Order is an important state interest, (3) either party could proceed to enforce or object to the Abuse Prevention Order in the state court, and (4) an order from this Court finding the state court’s order defective would have the effect of enjoining that court’s enforcement of its own order.” *Id.* at 7-8. Defendants ask this Court to abstain from hearing and deciding the Sanctions Motion. *Id.* at 8.

12 C. Humphries’ Reply.

13 Humphries disputes Defendants’ assertion that she is asking for the “permanent destruction
 14 of any relevant evidence.” ECF No. 89 at 4. Instead, Humphries counters she is only trying to
 15 prevent additional public dissemination of irrelevant and sensitive information. *Id.* at 4-5.
 16 Humphries contends Defendants’ idea that the word “surrender” somehow did not require them to
 17 turn over all electronically stored information in their possession is illogical. *Id.* at 6. Humphries
 18 questions why, if Defendants sought to obtain communications between Humphries and her
 19 purported sexual partners, Defendants have not served the appropriate discovery requests on
 20 Humphries. *Id.* at 8-9. Humphries speculates the reason Defendants have not done so is because
 21 they already have the information they need and/or want in their possession. *Id.* at 9, n.1. Humphries
 22 argues that Defendants have weaponized the simple process of filing public court documents to
 23 shame and intimidate Humphries throughout the litigation. *Id.* at 9.

24 Humphries questions why—if Defendants are being truthful in their assertions that they did
 25 not know they possessed the backup copy of the iPhone until the commencement of this litigation—

26 ³ Defendants cite Ninth Circuit guidance regarding the four factors to be considered in a *Younger* abstention
 27 analysis: “[A] district court must abstain from adjudicating an issue in a civil action where the state proceedings: (1) are
 28 ongoing; (2) implicate important state interests; (3) provide an adequate opportunity to raise federal questions; and (4)
Inc. v. County of Solano, 657 F.3d 876, 882 (9th Cir. 2011).

1 they did not alert Humphries' counsel to this revelation and discuss next steps. *Id.* at 10. Humphries
 2 states "Defendants surely knew once they discovered the copy of Sage's iPhone backup that their
 3 continued possession of that backup might violate the Boston Court's clear order." *Id.* Humphries
 4 lambasts Defendants saying that they took no precautionary measures; rather, they published the
 5 materials they knew they were not entitled to retain. *Id.* Humphries also questions the "unclean
 6 hands" argument made by Defendants pointing out they have never asked for many of the materials
 7 that are at issue here. *Id.* at 10-11.

8 Finally, Humphries argues this Court has jurisdiction to grant the relief sought. *Id.* at 11.
 9 Humphries contends she is not seeking the imposition of criminal penalties or civil contempt upon
 10 Defendants; instead, she is asking the Court to use its inherent powers to ensure the litigation
 11 proceeds in a good faith manner that does not serve as a tool to undermine Humphries' privacy
 12 rights. *Id.* Humphries also disputes the applicability of the *Younger* doctrine. *Id.* Humphries argues
 13 (1) there is no ongoing litigation in the state court in Boston, (2) there is no important state interest
 14 at stake since this dispute is between private citizens, and (3) the state court in Boston is not impeded
 15 in any way from performing its judicial functions. *Id.* at 11-12.

16 II. DISCUSSION

17 A. This Court Has Jurisdiction Over the Sanctions Motion.

18 Courts within the Ninth Circuit are empowered to take judicial notice of proceedings in other
 19 courts that are "within and without the federal judicial system, if those proceedings have a direct
 20 relation to matters at issue." *U.S. ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971
 21 F.2d 244, 248 (9th Cir. 1992) (internal citations and quotation marks omitted). Federal Rule of
 22 Evidence 201 allows district courts to judicially notice a fact that is not subject to reasonable dispute
 23 because it can be accurately and readily determined from sources whose accuracy cannot be
 24 reasonably questioned. It is a general rule that most matters involved in the discovery process are
 25 "left to the sound discretion of the district judge." *Asea, Inc. v. Southern Pacific Transportation Co.*,
 26 669 F.2d 1242, 1247 (9th Cir. 1981) (citation omitted); *DFR Apparel Co., Inc. v. Triple Seven
 27 Promotional Products, Inc.*, Case No. 2:11-cv-01406-APG-CWH, 2014 WL 1268689, at *1 (D.

1 Nev. Mar. 26, 2014) (“Courts have broad discretionary power to control discovery”), *citing Little*
 2 *v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 2014).

3 Here, the Boston Court Orders have a direct and substantial correlation to the matters at issue
 4 in the Sanctions Motion as well as this litigation. Under its well-established power to oversee
 5 discovery, the Court takes judicial notice of the Orders issued by the Boston Municipal Court and
 6 finds the scope of the Court’s jurisdiction encompasses the narrow form of relief sought by
 7 Humphries.

8 Further, *Younger* abstention is inapplicable. The Ninth Circuit instructs federal courts are
 9 forbidden “from unduly interfering with pending state court proceedings that implicate ‘important
 10 state interests.’” *Potrero Hills Landfill, Inc.*, 657 F.3d at 881 *citing Middlesex County Ethics Comm.*
 11 *v. Garden State Bar Ass’n*, 457 U.S. 423 (1982). A review of the four requirements that must be
 12 met, reveal no basis for abstention. There is nothing filed with this Court demonstrating Boston
 13 Municipal Court proceeding be presently ongoing (albeit Humphries states she “intends to enforce
 14 her rights under the abuse prevention orders in Massachusetts ...” (ECF No. 89 at 11)). The issues
 15 presented in this case are not state interest, but even if they are, the Boston state court proceedings
 16 do not provide an adequate opportunity to raise federal questions as the matter in that court was far
 17 more limited than what is presently alleged. Finally, nothing in this federal court action will enjoin
 18 the Boston Court proceeding or have the practical effect of doing so. In sum, the Court concludes
 19 that *Younger* abstention is not warranted here.

20 B. Defendants’ Disclosure of Documents on Humphries’ iPhone Was a Willful
 21 Violation of the Boston Municipal Court Orders.

22 The Supreme Court in *Roadway Express, Inc. v. Piper*, 447 U.S. 752 (1980), delivered the
 23 definitive summary of the bases on which a federal court may levy sanctions under its inherent
 24 power. The Court reiterated the federal courts’ inherent power to levy sanctions, including attorneys’
 25 fees, for “willful disobedience of a court order ... or when the losing party has acted in bad faith,
 26 vexatiously, wantonly, or for oppressive reasons....” *Id.* at 766 (internal quotation marks and
 27 citations omitted). A district court’s inherent power to levy sanctions is “both broader and narrower
 28 than other means of imposing sanctions.” *Chambers*, 501 U.S. at 32.

1 The content and meaning of the Boston Court Orders are clear. Defendants were instructed
 2 to “surrender any and all personal information to the Boston Police Department pertaining to
 3 [Humphries], including electronically stored information, and … not to publish such information.”
 4 ECF No. 77-3 at 2.⁴ The state court reiterated its Order stating that “any such information is not to
 5 be published in any way at all.” ECF No. 77-2 at 65-66. The Court finds no ambiguity in the
 6 meaning of these statements.

7 Defendants claim they dutifully complied with the Boston Orders as they turned over
 8 everything they had that was encompassed by the Orders to Humphries’ state court counsel. ECF
 9 No. 85 at 4. Defendants contend they did not realize the information that is the subject of the instant
 10 Sanctions Motion was in their possession until the commencement of this litigation and upon their
 11 searching for and gathering of evidence that might be needed. *Id.* at 3. Defendants assert the copy
 12 of Humphries’ iPhone in Defendants’ possession was uploaded by Humphries prior to the unraveling
 13 of the relationship between Humphries and Defendants. *Id.*

14 The Court does not agree with Defendants’ arguments. First, that Humphries allegedly
 15 downloaded the content of her iPhone onto a hard drive belonging to Defendants before the Boston
 16 Municipal Court issued its Orders is irrelevant to compliance with those Orders. There is nothing in
 17 the plain text of the Orders (or that may be implied from the text) that refers to an exception for
 18 information voluntarily provided by Humphries at any time, let alone before the Orders were issued.
 19 Second, Defendants’ argument that the Boston Court Orders “[do] not prohibit the Buttons from
 20 possessing a copy of the documents” is unpersuasive. *Id.* at 5. The text of the Orders demonstrates
 21 retention of Humphries’ iPhone or its contents would violate those Orders. Indeed, a contrary
 22 interpretation would defeat the intended purpose of an abuse prevention order.

23 Third, Defendants point to the legal duty for a party both before and during pending litigation
 24 to preserve evidence. *Id.* at 8 citing *Patton v. Wal-Mart Stores, Inc.*, Case No. 2:12-cv-02142-GMN-
 25 VCF, 2013 WL 6158467, at *6 (D. Nev. Nov. 20, 2013). The Court does not dispute the duty to
 26 preserve evidence; however, that duty does not excuse Defendants’ actions in this litigation.

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 28 ⁴ The state court also permitted the material at issue to be handed over to Humphries’ state court counsel. ECF
 No. 77-2 at 65-66.

1 Defendants state they discovered their possession of materials at issue after this litigation started and
2 did not disclose documents until they were requested by Humphries. *Id.* at 9. But the Boston Court
3 Orders did not cease to be effective once this litigation commenced. That is, upon discovery of the
4 materials, Defendants should have contacted Humphries (through counsel) to discuss the discovery
5 and potential surrender of the materials with provision for appropriate future use in this litigation. If
6 agreement could not be reached, the assistance of the Court should have been sought. However,
7 there is no basis for simply ignoring the Boston Court Orders. This principle applies equally to
8 Defendants' arguments that the information relates to claims made by third parties. *Id.* at 9-10.
9 Nothing in the Boston Court Orders made an exception for any future hypothetical litigation.

10 Fourth, Defendants' arguments that Humphries exhibited bad faith and unclean hands in
11 discovery are not germane to the instant Sanctions Motion. *Id.* at 10-12. If Defendants believe that
12 Humphries is acting in bad faith, Defendants should seek relief from the Court. Fifth, Defendants'
13 dispute over how certain information wound up in the hands of certain press outlets is irrelevant. *Id.*
14 at 12-13. Defendants acknowledge they filed material on the public docket that was covered by the
15 Orders issued by the Boston Municipal Court. *Id.* at 13.

16 Despite all of the above, the Court does share Defendants' concerns regarding Humphries'
17 request for an order requiring "Defendants to delete Sage's iPhone backup (and any other personal
18 data of Sage's they illegally possess) and not to publish or use such information, including in this
19 litigation, including at trial." ECF No. 77 at 14. Indeed, in her Reply, Humphries seems to retreat
20 and agree that "permanent destruction of any relevant evidence" is not required. ECF No. 89 at 4.
21 Instead, she asks "that only relevant materials are produced in this action and that only non-
22 confidential materials are subject to public disclosure." *Id.* at 4, 8.

23 The Court finds there is nothing in the Orders issued by the Boston Municipal Court requiring
24 the material at issue is to be destroyed. Further, Defendants indicate that their theory of the case will
25 require the use of information and documents at issue. ECF No. 85 at 3-4. However, Defendants'
26 cannot continue possession of the materials. The Boston Court Orders are clear that these materials
27 are not to be in Defendants' possession. Because the Boston Municipal Court is entitled to preclusive
28 effect under Massachusetts law, the Court will not allow the relitigation of the issue decided through

1 this proceeding. *See Southeast Resource Recovery Facility Authority v. Montenay International*
 2 *Corp.*, 973 F.2d 711, 714 (9th Cir. 1992). This decision “is mandated by the fundamental purposes
 3 of the full faith and credit statute, the promotion of comity and the conservation of judicial
 4 resources.” *Id. citing Migra v. Warren City School Dist. Bd. of Educ.*, 465 U.S. 75, 84 (1984); *Allen*
 5 *v. McCurry*, 449 U.S. 90, 95–96 (1990) *citing Worldwide Church of God v. McNair*, 805 F.2d 888,
 6 890-92 (9th Cir. 1986).

7 Based on the foregoing, the Court finds Defendants must turn over all materials in their
 8 possession, custody or control, including electronically stored information, that relates in any way
 9 to the materials addressed by the Boston Court Orders. The delivery of materials must be to
 10 Humphries’ current counsel within thirty (30) days of the date of this Order. No copies shall be
 11 retained by Defendants. No use of the materials, if any, in the future is to be filed on the docket of
 12 this case unless under seal. No other publication of such materials is to occur unless permitted by
 13 Court order. Defendants may, however, as they deem appropriate, seek production of information
 14 and materials they previously turned over or that is turned over in accordance with this Order for use
 15 in defense of the claims asserted. Such production must be made under a strict confidentiality order.
 16 Use of the materials must comply with this Order. If production is objected to, the parties may bring
 17 the issue to the Court for resolution. Indeed, discovery closes on March 29, 2023. ECF No. 96 at 1.
 18 This gives the parties ample time to continue the discovery process and, if necessary, bring disputes
 19 regarding the use of documents and information to the Court’s attention.

20 **III. ORDER**

21 IT IS HEREBY ORDERED that Plaintiff Sage Humphries’ Motion for Sanctions Regarding
 22 Unlawfully Obtained Information (ECF No. 77) is GRANTED in part and DENIED in part.

23 IT IS FURTHER ORDERED that Defendants must within thirty (30) days of the date of this
 24 Order deliver to Humphries’ current counsel all materials in their possession, custody or control,
 25 including electronically stored information, that relates in any way to the materials addressed by the
 26 Boston Court Orders. No copies of such information is to be retained by Defendants. No use of the
 27 materials, if any, in the future is to be filed on the docket of this case unless under seal. No other
 28 publication of such materials is to occur unless permitted by Court order.

1 IT IS FURTHER ORDERED that Defendants' surrender of all materials to Humphries'
2 counsel does not preclude future use of such information in Defendants' defense of this action;
3 provided, however, that use must either be agreed upon or approved by the Court.

4 IT IS FURTHER ORDERED that Humphries' counsel's request for an award of fees and
5 costs associated with bringing the Sanctions Motion is GRANTED.

6 IT IS FURTHER ORDERED that Humphries' counsel must submit a memorandum of fees
7 and costs associated with bringing the Sanctions Motion detailing the activities, hours spent (in
8 tenths of hours), and the rate charged by each attorney and non-attorney who worked on the Motion
9 and related filings. Appropriate redactions from billing records for attorney client privilege and/or
10 work product may be made for the public filing with non-redacted copies of such records filed under
11 seal. Humphries' counsel shall submit its memorandum within fourteen (14) days of this Order.
12 Defendants have 14 days to file a response, if any is desired. No reply shall be permitted.

13 IT IS FURTHER ORDERED that Plaintiff Sage Humphries' Motion to Supplement Motion
14 for Sanctions (ECF No. 91) is DENIED as moot.

15 DATED this 1st day of December, 2022.

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18 ELAYNA J. YOUCRAH
19 UNITED STATES MAGISTRATE JUDGE
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